Public (Separation) (195 48) Department.

SERIES.

P-28/C

G.O. No. 2309

Dated 16th September 1948

[Despatch Abstract.]

Separation of the Judiciary from the Executive - Note on the separation of judicial functions in Hyderabad State and the report on the working of the scheme - Papers Recorded.

Copy of letter No.2711/46-1 Pub. (General) dated 10-5-46 to the Chief Secretary to the Govt. of Sind, Karachi / Hon'ble the Resident for Hyderabad, Deccan.

The Govt. of Madras are now considering a proposal to separate the Executive from the Judiciary dealing with Criminal work. It is understood that the Govt. of ~~India~~ Sind/Hyderabad State have put into effect certain proposals for such separation which have been working for some time. I am to request that this Government may be favoured with any general orders, schemes, etc. on the subject that have been issued or prepared and which may be useful as a guide for this Government to proceed with the proposal.

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Copy of No.F.339-P/46, dated 9th April 1947 from the Secretary to the Hon'ble the Resident at Hyderabad to the Chief Secretary to the Government of Madras.

Separation of Executive from the Judiciary.

I am directed to refer to your letter No.2711/46-1, dated the 10th May 1946, and to enclose the papers noted below received from H.E.H the Nizam's Government.

1. A note on the Separation of the Judicial and Executive functions.
2. Translation of His Exalted Highness the Nizam's Firman dated the 29th Shaban 1339 Hijri.
3. Translation of Bill to amend the Criminal Procedure Code, His Exalted Highness's Government.

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4. Translation of R Government Notifications in connection with the separation of powers.

5. A report on the working of the scheme.

I have the honour to be Sir,
Your most obedient servant,

Sd/ ** **
for Secretary to Hon'ble Resident.

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SEPARATION OF THE EXECUTIVE FROM THE JUDICIARY IN THE HYDERABAD STATE.

The separation of the Executive and the Judicial functions in the administration of the Dominions was effected in Hyderabad State in 1921 when His Exalted Highness graciously commanded that --

"The executive officers should be relieved of all such functions as are regarded entirely judicial, with the exception of those functions which pertain to them under the provisions of the Revenue Laws or with which they are entrusted in respect of Penal Laws to preserve peace and to deal with important cases of a preventive nature."

(HIS Exalted Highness' Firman dated 9th June 1921)

Accordingly a conference was convened by the then President of the Executive Council (Sir Ali Imam) which was attended by the members of the Council, the Chief Justice, the Legislative, Finance and the Revenue Secretaries and Rai Balmukand, retired Judge of the High Court, and the following decisions were unanimously taken:-

1, There should be one Munsiff with first Class Magisterial powers for every Tahsil.

It was pointed out that there were at present 103 Tehsils, and 33 Munsifs, had been sanctioned. The Aurangab Division had practically a Munsiff for every Tahsil namely, 21 Munsifs as against 28 Tahsils. Gulbarga Division came next with 7 Munsiffs for 27 Tahsils. The two Divisions in Telingana had only 5 Munsiffs against 48 Tehsils 3 in Warra gal, and 2 in the Medak Division.

It was anticipated from past experience that the increase in the expenditure in the number of Munsiffs by 7(would to a great extent be met by the increase in Judicial receipts.

2. In addition to the 4 special Magistrates sanctioned at present, 4 more should be sanctioned for the present. These should be the Assistants of the District Judges and Magistrates for all Civil and Criminal cases with collateral powers.

3. All powers of Revenue officials in the Revenue Courts should remain intact.

4. A small Committee consisting of the Judicial Secretary, Rai Baijnath Sahib, and Rai Balmokand Sahib, should frame draft notifications showing:--

(a) What magisterial powers mainly in part (IV) of the Criminal Procedure Code and elsewhere will be retained by the first Talukdar and what, if any, by the Sub Divisional Officers.

(b) Draft amendments to the Criminal Procedure Code to ensure that appeals will in future lie to District Judges from all magistrates, whatever be their powers if the punishment is not more than ~~six~~ six months imprisonment of Rs.500/- ~~x~~ fine. At present appeals lie to the District Judges from all decisions of 1st class Magistrates, whatever be the punishment awarded.

A small Committee consisting of Mr. R.I.R. Glancy, C.S., Rajah Fatehnawaz-Want Bahadur, Mirza Hyder Jivan Beg Rai Balmokand Sahib, with the Judicial, Financial and Revenu

Secretaries should report as to the number of Sub Divisional charges that will be required in future in view of the reduction in judicial work of the Revenue officers and the number of Supernumeraries etc.; that will be available for reduction or transfer to the Judicial Department.

In accordance with the decisions of the Sub-Committees the sanction of His Exalted Highness was obtained, and the Civil and Criminal work hitherto jointly discharged by Revenu and Judicial Officers was wholly entrusted to the Judicial Officers, and the new scheme was enforced on the 1st of Kurda 1331 Fasli (1922).

The necessary amendments in the Criminal Procedure Code and the Government Notifications in connection with the scheme are detailed in Appendix A to G.

During the years that followed every measure conducive to the better organization of the Judicial Department was san tioned by the Government. A detailed account of such measure would be beyond the scope of this note.

In 1939 F. (1930) eight years after the enforcement of the scheme, a Committee was appointed by Government to report the working of the scheme. This Committee consisted of the following officers:--

1. Nawab Akeel Jung Bahadur, Chairman
2. Sir Theodore Tasker, I.C.S., Member
3. Nawab Mirza Yar Jung Bahadur, Member
4. Mr. Armstrong (Director General of Police), Member
5. Nawab Akbar Yar Jung Bahadur (Home Secretary), Mem and Secretary.

The recommendations of the Committee are detailed in t report annexed herewith. The opinion of the Committee that " is inadvisable to delegate such powers to the Revenue authori as concern the Criminal investigation, but those powers may b vested in them which are administrative in nature and are at sent being exercised by the Judicial Officers". "In view of present Judicial administration and the conditions prevailing in the Dominions the Committee is unanimously of the opinion that the present judicial administration is not at all defect - makes it clear that the scheme has not proved a failure.

The need to invest Revenue Officers with powers under preventive sections of the Criminal Procedure Code has been upheld, since the inception of the scheme and through Govt. N fications such powers vested in the Revenue Officers have bee kept intact.

Moreover to facilitate harmonious working of the Execu and Judicial Departments, under the recommendations of this Committee it has been decided by Govt. that in so far as the ventive measures are concerned the Magistrates should be rank as follows:-

1. 1st Taluqdar (Collector)
2. District Magistrate
3. Divisional Revenue Officer
4. Divisional Magistrates
5. Tahsildar (who, as a special case is vested with powers under the preventive sections of the Criminal Procedure Code).

so that in the absence of any Magistrate the next in rank wou be deemed to be the Magistrate of the highest rank for the pu poses of sections 128 Asafia Criminal Procedure Code). The Director General of Police and the High Court were asked to issue Circulars to subordinate officers making the implicatio of the above decision quite clear, that as far as practicable the Revenue Authorities instead of Judicial ones should be

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In addition to the powers given to the Revenue Officers under the preventive Sections of Criminal Procedure Code (vide Home Department Notifications No.4 and 5 of 1331 Fasli), it was decided to invest the Revenue Officers with powers under Sec.129 of the Asafia Criminal Procedure Code (Sec. 130 C.R.P.C) to enable them to disperse unlawful assemblies.

HIS EXALTED HIGHNESS THE NIZAM'S FIRMAN DATED 29TH SHABAN 1339 HIJRI.

For some time past the question of separation of Judicial from executive functions, in the administration of this Dominion has been receiving my attention.

After giving full consideration, I have come to the conclusion that the above reform should be introduced in the administration, as I am convinced that it will work well, and in a great measure, bring comfort and contentment to my beloved subjects.

I desire that in the proposal to separate the aforesaid functions the executive officers should be relieved of all such functions as are regarded entirely judicial, with the exception of those which pertain to them under the provisions of the Revenue laws or with which they are entrusted in respect of penal laws to preserve peace and to deal with important cases of a preventive nature.

The President of the Executive Council is authorised to arrange for the separation in the manner directed above, without delay, and to issue requisite and subsidiary orders. If the separation necessitates the promulgation of an Act the President may decide as to how far it is necessary.

For the information of public, this order shall be published in the Gazette Extraordinary.

APPENDIX A.

Bill to amend the Asafia Criminal Procedure Code.

No.5 of 1313 Fasli.

Received His Exalted Highness' sanction on the 8th Rabi-us-Sani 1340 Hijri.

Whereas it is expedient to amend the Asafia Criminal Procedure Code, it is hereby ordered as follows:--

Short title Commencement and extent — SECTION 1. This Act may be called the Asafia Criminal Procedure Code Amendment Act, and it should come into force from the date of its publication in the Jarida.

Amendment to Section 10. — SECTION 2. For clause 2 Sec. 10 of the Asafia Criminal Procedure Code the following clause 2 shall be substituted.

CLAUSE 2 - The Government shall have the power to appoint additional Magistrates in one or more of such courts for exercising the power of a District Magistrate Court.

Amendment to Sec. 107 — SECTION 3. In Section 107 of the Criminal Procedure Code for the word "to" the following words shall be substituted.

"or the First Class Magistrate who may be authorised by the Government".

Amendment to Sec. 114 — SECTION 4. For Section 114 of the Asafia Criminal Procedure Code, the following shall be substituted:

OFFICERS EMPOWERED TO EXECUTE BAILS AND SECURITIES. — SECTION 114.

(1) The Government shall have power to:-

(a) invest the Commissioner of Police, City and Suburbs, the Director General of District Police, or a Revenue Officer not below the rank of a Tahsildar with the powers described in Section 104, 105 and 106 ⊠ for use in their respective jurisdictions.

(b) confer upon the Taluqdar of a District for use within his jurisdiction the powers specified in section 107.

(2) When an officer is invested with powers according to clause (1), such powers shall be exercised in the way prescribed in this chapter.

Adding Section 131-A. Section 5. After Sec. 131 of the Asafia Criminal Procedure Code the following Sec. 131-A shall be added:-

Power of Rev. Officers to disperse an unlawful Assembly — Section 131 - A. The Govt. may confer upon a Revenue Officer, not below the rank of a Tahsildar, the powers of sections 126, 127, 128 which shall be exercised in the manner prescribed in the chapter.

Adding of Section 145-A - Section 6. After Sec. 145 of the Asafia Criminal Procedure Code the following Sec. 145-A shall be inserted:-

Powers of Revenue Officers under Sections 132, 143 144 and 145. — Sec. 145-A. The Government shall have the power to confer on a Revenue Officer not ~~bel~~ below the rank of a Tahsildar, the powers of Sec. 132, 143, 144 and 145 which shall be used in the manner prescribed in this chapter.

Amendment to Sec. 335.

Section 7. For Section 335 of the Asaria Criminal Procedure Code the following shall be substituted.

Appeal from sentence passed by the Magistrate of a lower class

Sec. 335. When a Magistrate holding an accusation as proved, passes on a person a sentence within the competence of a 2nd Class Magistrate, that sentence shall be appealable to the District Magistrate's Court and the said Court may transfer such appeal to the additional District Magistrate for decision.

Sd/ ** **
Home Secretary.

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APPENDIX B.

HOME DEPARTMENT

Notification.

No.1, Dated,

The Revenue Officers of the Diwani Llaqa on whom the Government has conferred Magisterial powers ex-officio or personally, are hereby relieved of such powers and in future no Revenue Officer shall exercise any of these powers except such as he may be invested with under the Asafia Criminal Procedure Code.

Sd/ ** **
Home Secretary.

APPENDIX C

HOME DEPARTMENT

Notification.

No.2 Dated

In exercise of the powers conferred by clause 1 of Section 10, of the Asafia Criminal Procedure Code, Government is hereby pleased to constitute all District Civil Courts as "District Criminal Courts" within their respective jurisdictions, and to direct that the Judges of such courts shall, in view of their office, be regarded as "District Magistrate".

Sd/ ** **
Home Secretary.

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APPENDIX D.

HOME DEPARTMENT

Notification.

No.3 Dated

In exercise of the powers conferred by clause 1, sub clause (a) of section 114 of the Asafia Criminal Procedure Code 1313 Fasli, the Government is pleased to confer on all the First Taluqdars and their Assistant 2nd and 3rd Taluqdars, in charge of a taluqa under the provisions of Section 10 of the Revenue Act No.8 of 1317 Fasli, with the powers specified in Section 104, 105 and 106 of the Asafia Criminal Procedure Code, for use in their respective jurisdictions.

Sd/ ** **
Home Secretary.

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APPENDIX E.

HOME DEPARTMENT

NOTIFICATION.

No.4 Dated

In exercise of the powers conferred by Clause 1, Sub-Clause B(b) of Section 114 of the Asafia Criminal Procedure Code, the Government is pleased to confer ex-officio on all the Taluqdars of the Districts, the powers described in Section 107, of the Criminal Procedure Code, for use in their respective Jurisdiction.

Sd/ ** **

Home Secretary.

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APPENDIX F.

HOME DEPARTMENT

Notification.

No.5 Dated

In exercise of the powers conferred by Clause (a) of Section 131 of the Asafia Criminal Procedure Code 1313 Fasli Government is pleased to confer on all the First Taluqdars of the Districts and their Assistant 2nd and 3rd Taluqdars in charge of a taluqa under the provisions of section 10 of the Revenue Act No.8 of 1317 Fasli, the powers of sections 126, 127 and 128 of the Asafia Criminal Procedure Code, for use in their respective jurisdictions.

Sd/ ** **

Home Secretary

p.t.o.

APPENDIX G.

HOME DEPARTMENT
Notification.

No.6, Dated

In exercise of the powers conferred by Section 145-A, of the Asafia Criminal Procedure Code 1313-F. the Government is pleased to confer on all Taluqdars of the Districts and the 2nd and 3rd Taluqdars, in charge of a taluqa under the provisions of section 10 of the Revenue Act No.8 of 1317 Fasli, the powers specified in sections 132, 143, 144 and 145 of the Asafia Criminal Procedure Code for ex-officio use their respective jurisdictions.

Sd/ ** **
Home Secretary.

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Report

Members of the Committee.

Nawab Aqeel Jung Bahadur, (Chairman).
Nawab Mirza Yar Jung Bahadur. Member
Mr. Armstrong, Member
Mr. Dorabji Chenoy, Member
Nawab Akbar Yar Jung Bahadur,
Member and Secretary.

The Executive Council held on the 1st Farward: 1339 F., having appointed a Committee consisting of the Officers marginally noted for considering the question of separation of the Judicial and Executive powers had ordained as follows:--

"The Council is not prepared to consider the question of revoking the separation scheme but it considers it expedient to ascertain whether the procedure has created any particular defects in maintaining public tranquility. If so what are they and how can they be remedied. In this connection it is also worthy of consideration whether or not the Criminal powers at present enjoyed by the first taluqdars of the district are sufficient to maintain their position as the highest authority in their jurisdiction. The Committe without criticising the principle of the separation of powers, will only consider over such defects, if any, as are acting as obstacles in the successful continuance of this scheme and will submit a report suggesting the practical measures to be taken for the removal of those defects."

Accordingly the Committee began to hold its meetings from 14th Farwardi 1339 F. In the second sitting of the Committee held on Farwardi 24th, 1339 F. the Revenue Secretariat proposed to nominate Mr. Tasker, the Revenue Secretary as a member of the Committee in place of Dorabji Chenoy as the situation required. The Committee supported the proposal and the Council held on 7th Ardibehist 1339 F., approved the proposal and consequently Mr. Tasker attended the Committee as a Member until the completion of the work The Committee was desirous to complete its work earlie but on account of the long leave of Nawab Aqeel Jung Bahadur and Mr. Armstrong; Mr. Tasker's officiating as the Hon. the Revenue Member and being entrusted with the special duty concerning the Round Table conference and owing to the delay caused by the 1st Taluqdars and Subedars in sending the required material, the Committee could not submit this report earlier. The Committee finished its work holding five meetings in all.

1.Whether the present administration as it exists after the separation of the judicial powers from the Executive ones contain any defects that act as hindrances and obstacles in sue its successful retention and if so what are they ? and how can they be best remedied ?

2. Whether the powers at present vested in the fist taluqdars are sufficient to maintain the public tranquility and if such is the case what additional powers are required to be delegated to them?

The Committee after framing the marginally note two issues, prepared questionaries and send them to th first taluqdars and Subedars. Mr. Armstrong had also framed questionaries to be sent to the Dt. Police Supdts. but as they were connected with points that lay beyond the scope of this Committee, therefore, he did not think it proper to issue them in accordance with the instructions of the Executive Council and similarly Nawab Mirza Yar Jung Bahadur considered it unnecessary to issue interrogatories to the Judicial Officers.

The detailed answers to the questions put to the taluqdars and Subedars by the Committee were received with some delay (copies enclosed). After considering over them carefully and keeping in view the present Judicial administration and the conditions prevailing in the Dominions, the Committee is unanimously of opinion that the present Judicial administration is not at all defective; but there are two points which need consideration.

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Firstly it is not advisable to invest the judicial officers with Executive Powers. Secondly when similar powers are delegated to the officers of the two different departments it should be so arranged as to avoid clash of interests which would create disharmony. We have, therefore, decided that it is inadvisable to delegate such powers to the Revenue authorities as concern the Criminal investigation but those powers may be vested in them which are administrative in nature and are at present being exercised by the Judicial officers.

According to the above mentioned principle the Committee recommends as follows:--

(1) That it is undesirable to delegate any powers of the Hyderabad Penal Code to the Revenue Authorities.

(2) In case of laws pertaining both to administrative powers as well as to powers regarding the investigation of crimes the former may be delegated to the Revenue Authorities while the latter should continue, as usual, to be exercised by the Judicial Authorities. Hence:-

(a) all the powers pertaining to Cattle Pound Act may be given to the Revenue Authorities but section 20 only of the said Act should be dealt with by the Judicial Authorities.

(b) Out of the rules, enforced under the poison Act the Revenue Authorities may be vested with the powers concerning the grant of licenses

(c) all the powers conferning the rules and regulations for the Rohillas may be delegated to the Revenue Authorities.

(d) as regards the Criminal Tribes Act, the registration of the men belonging to the Criminal Tribes should absolutely be dealt with by the Revenue authorities, will as at present, take place in the Judicial Department.

e) the licenses granted under the Petroleum Act should in future be issued by the Revenue Authorities.

(3) That Section 129 of the Criminal Procedure Code (to disperse the unlawful assembly with the help of regular forces) may be added to the powers at present exercised, according to the said Act, by the Revenue Authorities relating to the prevention of crimes.

(4) It was also considered whether or not it was advisable that the Judicial authorities also should remain concerned with the criminal powers that have already been or are at present being delegated to the Taluqdars. Regarding this point we are of opinion that for the maintenance of public tranquility it is essential that these powers should be exercised by as many officials as possibly can. But as the actions taken under preventive sections are of an administrative nature we propose the following in this connection.

(a) So far as the preventive measures are concerned the magistrates should be ranked as follows and in the absence of any magistrate the next man will be deemed as the magistrate of the highest rank for the purpose of sec. 128 of C.R.P.C.

(1) First District Taluqdars,
(2) District Magistrate
(3) Divisional Revenue Officer
(4) Divisional Magistrates
(5) Tahsildar (who, as a special case, is vested with the preventive measures)

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(b) The Director-General of Police may please give necessary instructions to his subordinates through a circular that they may as far as practicable seek help in such matters from the Revenue authorities instead of the Judicial ones.

(c) If any application for the suppression of a riot is presented before any judicial or Revenue Officers then it shall be incumbent on the Magistrate concerned to inquire from the police in writing, before he takes any action, whether or not the case is already being dealt with by any other magistrate, and on receiving a reply in the affirmative he should file the application without taking any further action thereon so that no complication may arise by conducting the same proceedings in the two different departments.

(d) In our opinion it is not advisable to delegate any powers of the criminal Procedure Code to the Tahsildars, but in special cases where the headquarters of the Judicial and the Revenue departments are situated at some distance from one another (e.g. Makthal and Taljapur) in that case they may be invested with some of the preventiv powers of criminal Procedure Code in order to take immediate actions.

(e) In our opinion, keeping in view the prestige attached to their office, the appeals of such orders and judgements of the Taluqdars and the Divisional Officers a are given by them in their capacity as a magistrate, should be preferred in the Sessions Court while the appea of the orders and judgements of the Tahsildars should be preferred in the Courts of the District Magistrates. Und Under the same principle the powers vested in the Distric Magistrates under Sec. 360 Cr.P.C. to call for the files from the Subordinate Courts will no longer be exercised b taluqdars and Divisional Officers.

(5) Most of the taluqdars in their replies have asked for the powers mentioned in Sec. 148 Cr.P.C. but we think it unnecessary to delegate these powers to Revenue officers. They have already been vested with the powers concerning the preventive measures under the Revenue Act, and in no way, does it seem proper to delegate the same kind of powers to the authorities of the same department under to different Acts. These powers should therefore continue to be exercised by Judicial authorities. However this section requires necessary amendment because it seems that most people try to take an undue advantage of the section and it is not properly exercised on accoun of which on the once hand the Civil cases are being affec ed while on the other hand the High Court is unnecessaril overburdened with additional work due to excess in the number of revision cases.

(6) We have also considered the point as to which of the two departments viz. the Revenue or the Judicial should be benefitted by the income, if any, accruing from the exercise of powers that are being, or have already been, delegated to the Revenue Department by the Judicial one. Regarding this we are of opinion that as these powers have been delegated by the Judicial department to the Revenue authorities in their capacity as the Magistrates, therefore, the income accruing from this item will go to the Judicial department after payment of the expenditure.

If our recommendations mentioned above are approved of and the rules, regulations and orders are accordingly amended, on the one hand the judicial authorities remain solely concerned with the judicial affiairs and all the executive powers that are at present enjoyed by them become vested in the Executive

authorities...

only, while on the other hand they do away with the complications likely to arise as a result of the dual nature of the present work; moreover they also obviate the objection of the Taluqdars that they do not take any action under the preventive sections for, according to the criminal procedure Code the appeal of their judgements are preferred in the District Magistrates Courts which affects their official position.

Sd/ Nawab Aqeel Jung Bahadur
Sd/ Nawab Mirza Yar Jung Bahadur
Sd/ Nawab Akbar Yar Jung Bahadur
Sd/ Mr. Armstrong